IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1451 OF 2004

SHRI EKNATH HARI WAREKAR .. APPELLANT
VERSUS
SOU.SULBHA ANKUSH MAYEKAR & ORS. .. RESPONDENTS

Mr.Desai with Ms.Geeta Shastri for appellant
None for respondents

CORAM : P.V.KAKADE,J.

DATE : 23RD DECEMBER,2004

P.C.:

1. The present appeal is preferred by this appellant against the judgment and order passed by the Joint District Judge, Ratnagiri on 27.8.2004 dismissing the appeal and confirming the order dated 23.8.2001 passed by Civil Judge, Senior Division, Ratnagiri decreeing the suit of the plaintiff for possession.

2. I hard the learned counsel for the appellant. Perused the record made available to me.

3. The agricultural land bearing Survey No.317/6 admeasuring 6-Ares and the house standing thereon bearing House No.1375 are the subject matter of the suit. The Plaintiff claims that this property was owned by her parents. Her father died in the year 1957 i.e. on 1.6.1957 and mother Chandrabhaga died on 8.8.1988 and thereafter Chandrabhaga had become owner of the property. It was her case that Chandrabhaga had asked the defendant no.1 to look after the property and to maintain it, since the defendant no.1 was occupying the adjacent property. The defendant no.1 had taken forcible possession of the property and he had also given the open side of the land to defendant nos.2 to 4. When the plaintiff came to know about the encroachment committed by the defendant no.1 and the rest of the defendants, she had given notice to the defendants, but the defendants did not comply with the same and suit came to be filed for possession of the suit property.

. The defendant no.1 filed written statement opposing the claim and came out with the case that late Devaji Shivram was uncle of defendant no.1. He and Chandrabhaga died issueless and thereafter being nephew of Devaji had inherited the property. He also denied

that the plaintiff had any concerned with the suit property and claimed that he had become the owner of the property by adverse possession. Other defendants did not file written statement and suit proceeded ex-parte against them.

. So far as defendant no.2 is concerned his name came to be deleted at the trial stage from the Plaint.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that she was owner of the suit property and defendants had encroached upon the said property. It was also held that defendant no.1 had let out open space to defendant nos.2 to 4 illegally. The defendant no.1’s plea that he had become owner by adverse possession came to be rejected and thereby plaintiff was held entitled to vacant possession of the suit property after removing the encroachment.

. Being aggrieved by the said judgment and order defendant no.1 had preferred an appeal in the District Court, Ratnagiri. The learned Appellate Court Judge after hearing the parties uphold the findings recorded

by the trial judge on the basis of available evidence and dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that the learned counsel for the appellant submitted that the substantial questions of law was to the effect that there was misinterpretation of the documents on record by both the courts below and therefore, it requires consideration. He provided the compilation of entire documents on record. The perusal thereof was sufficient to convince me that there was no error apparent in appreciation of the documentary evidence on record and therefore, I do not agree with the learned counsel for the appellant when he submits that there is misinterpretation of the documents. The documentary evidence on record, coupled with the oral evidence, are sufficient to show that plaintiff had proved her title to the suit property. It is also established that defendant nos.2 to 4 have encroached upon the property through defendant no.1. The evidence is also sufficient to discard the theory of defendant no.1 that he has become owner of the property by adverse possession. In other words both the courts below are seen to have appreciated the evidence in just and proper manner and therefore, it would brook no

interference.

5. In the case of **KONDIBA DAGADU KADAM VS. SAVITRIBAI SOPAN GUJAR & ORS. AIR 1999 (3) SUPREME COURT 2213** the apex court has held that the conditions mentioned in the Section 100 must be strictly fulfilled before a second appeal can be maintained and no Court has the power to add to or enlarge those grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under section 100 of C.P.C. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In the present case before us as can be seen from the record, the village as well as revenue records are sought to be relied upon by the appellant in order to confuse the issues. However, the documents along with oral evidence, are also clear enough to establish the plaintiff’s title to the suit property and the factum of encroachment by the defendants. Therefore, I hold that there is no question of misinterpretation of any document involved in this case and therefore, appeal deserves to be dismissed.

6. In the result the appeal stands dismissed with no order as to costs.

7. Consequently the civil application also stands disposed of with no order as to costs.